



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing City Manager to Execute EBMUD Protest Dismissal Agreement

MEETING DATE: April **2, 2008**

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution authorizing the City Manager to execute a protest dismissal agreement with the East Bay Municipal Utilities District (EBMUD).

BACKGROUND INFORMATION: In 2007, the City filed a protest with the State Water Resources Control Board over the proposed extension of one of East Bay Municipal Utilities District's (EBMUD) Mokelumne River water rights. The protest process includes a time period in which the parties are expected to attempt to negotiate a resolution of the protest. In 2007, Council directed staff to seek to resolve Lodi's protest in a way that would allow Lodi to utilize its purchased water from the Woodbridge Irrigation District (WID) year-round rather than during the March thru October season as presently allowed.

Staff has worked with EBMUD and WID officials and has an offer from EBMUD to allow for up to 1,000 acre-feet of water to be delivered to Lodi during the winter season. The water would be counted toward our total annual amount of 6,000 acre-feet. In effect, EBMUD is agreeing to store the water for Lodi for subsequent release at no additional cost to Lodi. This agreement would be memorialized in an agreement between EBMUD and WID (as part of an agreement addressing the WID/Stockton water sale, similar to what was done in 2003 with the WID/Lodi sale) and a "protest dismissal" agreement between Lodi and EBMUD. The draft protest dismissal agreement is attached.

FISCAL IMPACT: There are no direct impacts; however, obtaining the ability to use our allocation year-round could mean substantial cost savings in sizing the water treatment plant, as well as providing operational efficiencies. In addition, resolving the protest will save tens of thousands of dollars in potential legal and engineering costs to pursue the protest through the State Water Board.

FUNDING AVAILABLE: Not applicable.

Richard C. Prima, Jr.
Public Works Director

RCP/PJF/pmf
Attachment

APPROVED: _____

Blair King, City Manager

SETTLEMENT AGREEMENT
East Bay Municipal Utility District – City of Lodi

This Settlement Agreement is entered into by and between the East Bay Municipal Utility District (EBMUD) and the City of Lodi (Lodi), hereinafter collectively referred to as the “Parties,” this ____ day of _____, 2008.

WHEREAS, EBMUD releases Regulated Base Supply water to Woodbridge Irrigation District (WID) pursuant to a series of agreements between the two agencies, including the Agreement entered into in 1965 and the Third Supplementary Agreement entered into in 2003; and

WHEREAS, on May 13, 2003, WID and Lodi entered into a Purchase Agreement (Lodi Purchase Agreement) under which, among other things, WID will provide to Lodi from March 1 through October 15, up to an annual average of 6,000 acre-feet of conserved water per annum out of WID’s pre-1914 water rights portion of its Regulated Base Supply; and

WHEREAS, one reason for the Third Supplementary Agreement was to resolve disagreement between EBMUD and WID over the provision of WID Regulated Base Supply water to Lodi for municipal purposes, and the disagreement and its resolution are referenced in the 13th and 14th Recitals to the Third Supplementary Agreement; and

WHEREAS, Provision 12 of the Third Supplementary Agreement between EBMUD and WID provides that WID shall not divert any Regulated Base Supply water after October 31st of any year; and

WHEREAS, Lodi has recently determined that the preferred alternative for enhancing its water supply is to construct surface water treatment works and deliver treated water to Lodi’s customers; and

WHEREAS, to facilitate its plans, Lodi wishes to receive 1,000 acre-feet of water out of WID’s pre-1914 water rights portion of its Regulated Base Supply for purposes of operating its proposed surface water treatment plant during the winter months from October 15 of one year through the end of February of the following year; and

WHEREAS, on January 17, 2008, to facilitate Lodi’s plans and allow an additional water sale to the City of Stockton, WID entered into the “First Amendment to Agreement for Purchase of Water from Woodbridge Irrigation District by City of Lodi” (First Amendment) under which, among other things, WID allowed Lodi to bank up to 42,000 acre feet of unused water until October 15, 2010 for later usage and to extend the term of the Lodi Purchase Agreement by four years, to October 15, 2047; and

Whereas, EBMUD and WID contemplate entering into a Fourth Supplementary Agreement to address issues regarding WID’s sale of water to the City of Stockton and provision of water to the City of Lodi; and

WHEREAS, on February 9, 2007, Lodi filed with the State Water Resources Control Board (SWRCB) a protest against EBMUD's petition to extend its Camanche Permit No. 10478 (Lodi Protest); and

WHEREAS, EBMUD wishes Lodi to dismiss the Lodi Protest; and

WHEREAS, in return for Lodi dismissing its protest against EBMUD's Camanche extension, EBMUD is willing to amend its agreements with WID to allow and provide up to 1,000 acre-feet of water out of WID's Regulated Base Supply from October 15 to the end of February, thereby allowing WID to in turn provide said water to Lodi during the winter period (October 15 to the end of February) pursuant to the Lodi Purchase Agreement as amended.

NOW, THEREFORE, THE PARTIES DO AGREE AS FOLLOWS:

1. As provided below in Section 2, EBMUD agrees that upon receiving a written request from WID, EBMUD will provide up to 1,000 acre-feet from the pre-1914 water rights portion of WID's Regulated Base Supply over the period from October 15 of one year through the end of February of the following year for purposes of providing winter water to the City of Lodi pursuant to the agreements between WID and Lodi. This commitment will not commence until EBMUD and WID enter into a Fourth Supplementary Agreement.
2. Such winter flows when requested by WID shall be deducted from the quantity of Regulated Base Supply water which WID is entitled to receive and divert under its agreements with EBMUD for the following March 1 through October 15 period. These deductions will be made whether or not Lodi takes delivery of the water and will be triggered by WID's request. Once started, such winter flow shall be at a uniform rate. WID and EBMUD shall meet and confer in a timely manner to determine an actual winter flow schedule if EBMUD or WID wishes to modify the uniform flow schedule. Requests to modify the uniform schedule shall not exceed one per month during this winter period.
3. Within ten (10) business days from execution of this Agreement, or execution of the 4th Supplemental Agreement between EBMUD and WID, whichever is later, Lodi shall dismiss its protest of EBMUD's Camanche permit (Application 10478) time extension petition and submit a letter to the SWRCB requesting the dismissal of the Lodi Protest. Lodi will not take any action to oppose EBMUD's petition to extend its Camanche Permit.
4. In the event that Lodi is not able to use the full extent of its contract water under the Lodi Purchase Agreement and its amendments, and Lodi elects not to bank said unused water under the terms of the Purchase Agreement and amendments, Lodi agrees to pursue with WID any necessary agreements to allow the sale to EBMUD of any unused water provided by the Lodi Purchase Agreement and amendments. The purpose of such agreements would be to allow EBMUD the

right to purchase Lodi's unused water at a price and terms to be determined between Lodi and EBMUD.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement as of the day and year first above written by their respective officers thereunto first duly authorized.

EAST BAY MUNICIPAL UTILITY DISTRICT

By _____
President

By _____
Secretary

CITY OF LODI

By _____
Blair King
City Manager

ATTEST:

By _____
Randi Johl
City Clerk

APPROVED AS TO FORM:

By _____
D. Stephen Schwabauer
City Attorney

RESOLUTION NO. 2008-53

A RESOLUTION OF THE LODI CITY COUNCIL
AUTHORIZING THE CITY MANAGER TO EXECUTE A
PROTEST DISMISSAL AGREEMENT WITH THE EAST
BAY MUNICIPAL UTILITIES DISTRICT

WHEREAS, in 2007, the City of Lodi filed a protest with the State Water Resources Control Board over the proposed extension of one of the East Bay Municipal Utilities District's Mokelumne River rights; and

WHEREAS, the protest process includes a time period in which the parties are expected to attempt to negotiate a resolution of the protest; and

WHEREAS, City Council directed staff to seek to resolve the protest in a way that would allow the City of Lodi to utilize its purchased water from Woodbridge Irrigation District year-round rather than during the currently allowed March through October season; and

WHEREAS, the East Bay Municipal Utilities District has offered to allow up to 1,000 acre-feet of water to be delivered to the City of Lodi during the winter season; and

WHEREAS, this agreement would be memorialized in an agreement between the East Bay Municipal Utilities District and the Woodbridge Irrigation District and a protest dismissal agreement between the City of Lodi and the East Bay Municipal Utilities District.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a Protest Dismissal Agreement with the East Bay Municipal Utilities District that includes provisions for winter season water for the City of Lodi.

Dated: April 2, 2008

I hereby certify that Resolution No. 2008-53 was passed and adopted by the City Council of the City of Lodi in a regular meeting held April 2, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Katzakian,
and Mayor Mounce

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


JENNIFER M. PERRIN
Deputy City Clerk